IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1045

BERGEN COUNTY ASSOCIATES, EAST RUTHERFORD INVESTMENT CORP., BRANCASONS, INC., DEANNA INDUSTRIES, INC., INDUSTRIAL CONSTRUCTION ASSOCIATES, and BERGEN COUNTY ASSOCIATES SUNOCO,

Petitioners,

vs.

BOROUGH OF EAST RUTHERFORD, a Municipal Corporation, and DIVISION OF TAX APPEALS IN THE DEPARTMENT OF THE TREASURY, STATE OF NEW JERSEY,

Respondents.

(Consolidated Cases)

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

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(Consolidated Cases)

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue, to review the final judgment of the Superior Court of New Jersey Appellate Division, entered in these consolidated cases on March 3, 1977, certification having been denied by the Supreme Court of New Jersey on October 25, 1977.

Opinion Below

Neither the October 25, 1977 final order (without opinion) of the Supreme Court of New Jersey denying certification, nor the opinion of the Superior Court Appellate Division rendered March 3, 1977, has as yet been reported. The order denying certification and the lower court and agency opinions are set forth in full in the Appendix to this Petition (P1a, P29a to P38a, and P39a, *et seq.*, respectively).

Jurisdiction

The order of the Supreme Court of New Jersey denying certification entered on October 25, 1977, finalized the March 3, 1977 judgments of the Appellate Division. The jurisdiction of this Court is invoked under 27 U.S.C. §1257(3).

Questions Presented for Review

1. Where, in the proper exercise of legislatively-conferred police power, a moratorium against any economic use of vacant land is imposed and enforced by a political subdivision of the State during a tax year, may the vacant land thus burdened be subjected to *ad valorem* property taxes for that tax year as though it was free of the burden of the moratorium?

2. Where:

   (a) the sovereign State of New Jersey officially asserts a riparian claim of legal title to vacant land, record title to which is in a non-tax exempt entity; and

   (b) the State's contested claim, if valid, renders the land tax exempt; and

   (c) neither the State nor the record titleholder has obtained or can obtain judicial disposition of the contested claim of title for many years notwithstanding diligent prosecution by the private claimant; and

   (d) a political instrumentality of the State (of which the local taxing entity is a constituent geographic and political element, and which is itself a beneficiary of the taxes assessed and collected) by formal regulation prohibits all economic use of the taxpayer's land whether claimed or not claimed by the State; and

   (e) no mechanism exists whereby taxes may be deferred pending judicial resolution of the title dispute, *i.e.*, the question whether the land is taxable or tax exempt except at the peril of strict tax foreclosure by the local taxing entity,

   then, given all of the foregoing, may the land rendered thus inutile be properly assessed for local *ad valorem* property taxation as though it were immediately and fully marketable and buildable?

3. If vacant lands thus rendered economically inutile are assessed as though the moratoria are non-existent and in accordance with the same standards of valuation applied to vacant lands not so encumbered, is the result not a denial of equal protection and substantive due process and a violation of the 14th Amendment to the United States Constitution?

4. Where arithmetical errors in the administrative determination of an assessment appear on the face of the record and are called to the attention of the

courts, and correction is declined by judicial inattention, does not such inattention constitute a denial of procedural due process?

Constitutional Provisions

The federal constitutional provisions involved are the equal protection and due process clauses of United States Constitution Amendment 14.

Because venue is laid in the Appellate Division of the Superior Court in actions in lieu of prerogative writs addressed to final decisions of state administrative agencies, R. 2:2-3(a), the Appellate Division is the court of original jurisdiction. Such *in lieu* actions are prosecuted in a manner similar to appeals from lower courts, hence constitutional questions are raised in the appellate briefs. See Appendix to this Petition, P34a, as well as P5a-6a and P27a.

Statement of Case

Proceedings in the Administrative Tribunals

The several petitioners herein are taxpayers holding record titles to vacant "meadowlands" located in the respondent Borough of East Rutherford Bergen County, New Jersey. They filed tax appeal petitions challenging the several assessments pursuant to statute (N.J.S.A. 54:2-33 *et seq.*) with the Bergen County Board of Taxation for the years 1969 through 1972. That Board either confirmed the assessors' valuations or made adjustments unsatisfactory to the taxpayers and administrative appeals were taken accordingly to the New Jersey Division of Tax Appeals, in the Department of the Treasury.

The Division held hearings in 1973 and 1974 on these then-consolidated appeals (which covered assessments for the tax years 1969 through 1972 and also, by stipulation, 1973) and thereafter rendered decisions on May 13 and October 16, 1974. The opinions and decisions are set forth in the Appendix to this Petition (P39a *et seq.*).

Proceedings in the Courts

Consolidated appeals (in the form of original actions in lieu of the prerogative writ of certiorari, R.* 2:2-3(a)) were taken to the Appellate Division which rendered a decision on March 3, 1977 affirming the judgments of Division of Tax Appeals. Its opinion is set forth in the Appendix to this Petition (P29a to P38a). That opinion has not as yet been reported.

A Petition for Certification was denied by the Supreme Court of New Jersey without opinion on October 25, 1977. The order of denial has not as yet been reported. It is set forth in the Appendix to this Petition (P1a).

Denial of equal protection and due process were raised and argued by petitioners below but the state statutory proceedings were held not to have conflicted with the cited federal constitutional requirements.

Reasons for Granting the Writ

1. *Certiorari* should be granted because:

   (a) the decisions below affirmed municipal tax assessments of vacant lands which were subject to governmentally-imposed prohibitions against any

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* Rules Governing the Courts of the State of New Jersey.

practical economic use thereof, as though said lands were not so restricted, utilizing the same valuation standards as were applied to lands not so restricted;

(b) the governmentally-imposed prohibitions against construction rendered the lands so restricted substantially less valuable than lands not so restricted for the several tax years in question;

(c) the tax treatment of dissimilar properties "equally" is as much a violation of the Equal Protection Clause as is the tax treatment of like properties dissimilarly; and

(d) municipal refusals to recognize reductions in land values resulting from official construction moratoria are problems of growing and widespread dimension by reason of the increasing incidence of building moratoria against vacant lands burdened by flood plain designations, sewerage and other environmental problems, planning and zoning revisions, etc.

2. This case merits review because of the "Hobson's Choice" to which the State of New Jersey's claims of riparian ownership puts the private record titleholder, and the due process implications thereof. The State has been asserting a generalized claim of title to interior meadowlands since 1960 (and, by specific statutory notices of claims, since 1968) resulting in a series of conflicting published claims maps and overlays since January 4, 1970. Most of these claims are not even today fully decided and have, as both a legal and a practical matter, prevented any development of the petitioners' and

others' vacant meadowlands for many years last past and currently. The municipal taxing authority, however, has continued to assess these lands as though there were no official impediments to development. The private titleholder is thus put to a "Hobson's Choice". If it should be finally determined that the State's title claims are valid, the land is tax exempt and any payments would have been made as a volunteer and would not be recoverable. If, on the other hand, the private record titleholder does not pay the taxes as assessed, year by year, then he runs the risk of losing his lands by *in rem* tax foreclosure.

This "catch-22" situation has now continued for in excess of 10 years without meaningful resolution, as the State of New Jersey attempts by a series of trial-and-error mappings to meet the statutory standards for asserting its claims. Those efforts whipsaw the private record titleholder between the interminable delays in establishing or disestablishing the State's claims, and the immediate demands for taxes by the State's municipal taxing instrumentality or *alter ego*. The private record titleholder cannot obtain a prompt determination of his title or interest (or the lack thereof) and is deprived of due process by being compelled to pay full taxes for an excessive length of time on property, all or part of which may some day be declared state-owned and tax exempt.

3. This case merits review because the court of original jurisdiction below (in these cases the Appellate Division) has ignored and disregarded admissions and arithmetical errors appearing on the faces of the record and of the opinions it was reviewing, not-

withstanding these arithmetical errors and admissions were specifically brought to its attention. The literal affirmance by judgment of briefed arithmetical errors manifests such gross inattention by a court of original jurisdiction as to constitute a denial of procedural due process; and it exposes the ostensibly erudite address of that court to the issues, as an exercise in the creation of illusions of hearings and reviews.

ARGUMENT

1. The first question raised is of increasing significance because of the growing incidence of building moratoria in response to time-suspension requirements relating to flood plain, sewerage capacity and other environmental problems, and municipal replanning activities designed to accommodate judicial and legislative mandates for provision for law and moderate income housing, and other crisis demands.

One of the prohibitory provisions here involved is a moratorium imposed for some 2½ years (May, 1970 to November, 1972) of the five tax years in issue, to give the Hackensack Meadowlands Development Commission, a State agency, time to complete a master plan covering in excess of 10,000 acres of tidal swamp and meadow located in some 14 New Jersey municipalities in two counties. This project was a public endeavor of undoubted importance to the future of this large and significant area, lying less than three miles from the heart of New York City. The burden thus placed upon the private record titleholder comes within the ambit of the zoning power to regulate private property without compensation, *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926) and the many following

cases (and see also *Hackensack Redevelopment Agency* v. *Hackensack Meadowlands Development Comm.*, 119 N. J. Super. 572, 293 A. 2d 192 (App. Div. 1972), cert. den. 62 N. J. 72 (1972), upholding the validity of the moratorium).

But such police power restrictions against free development of vacant land however widely and increasingly permitted, create a concomitant diminution of the value thereof to the owner, for the tax years in which the moratorium is in effect.

Land taxes reflect the share which each property owner contributes to the common upkeep of government according to the value of his property. That property has value to him according to what he can do with it. Land restricted by zoning to single family residence use is not expected to carry the same burden of government support as, for example, land on which a shopping center or high-rise office building may be located. And land which is zoned to a loss operation may carry no tax burden at all. *Twin Lakes Golf and Country Club* v. *King County*, 87 Wash. 2d 1, 548 Pac. 2d 538 (Sup. Ct. 1976); cf. *Supervisors of Assessments* v. *Bay Ridge Properties, Inc.*, 270 Md. 216, 310 A. 2d 773, 777 (Ct. App. 1973).

See also *Cappture Realty Corp.* v. *Board of Adjustment*, 126 N. J. Super. 200, 313 A. 2d 624 (L.Div. 1973), *aff'd* 133 N. J. Super. 216 (App. Div. 1975) where the trial court noted:

> "Plaintiff also argues it is being assessed for taxes as if the land were not under a moratorium, and is paying property taxes under protest. It appears obvious that the moratorium establishes as a matter of law that the subject land is temporarily restricted, and presumably the tax assessor estab-

lishes true value accordingly for that period. See N. J. Const. (1947), Art. VIII, §1, par. 1(a), and N.J.S.A. 54:4-2.25 and regulations thereunder. The taxing authorities cannot have it both ways. It may be noted that L.1972, C.1975, §10 (N.J.S.A. 58:16A-61) would require tax assessors to consider the impact of rules or regulations issued pursuant to that act in establishing full value of lands designated as floodways or as flood fringe areas. The court considers this merely a restatement of present law."

The taxpayer here is caught in a pincers, the arms of which are the *zoning instrumentality* of the State of New Jersey on the one side and on the other, the *taxing instrumentality* of the State of New Jersey, *i.e.,* the respondent municipality. The first arm forbids use of the land for the tax year; the second taxes the land as though it was free of any zoning impediment and can be developed at the will of the owner.

It should be noted that taxes are assessed and collected one year at a time and the varying states of encumbrance by moratoria can be accurately reflected in the assessment year by year. Valuation for taxation is not like valuation for condemnation, or constructive condemnation (which, like diamonds, are "forever"); rather, tax valuations last for only one year and can be and are changed on an annual basis as the values of properties assessed also change.

To assess such encumbered lands at the same rates and in accordance with the same standards of value as land free and clear of such encumbrances is discriminatory, a denial of 14th amendment equal protection and due process rights.

2. The second question of constitutional dimensions arises because of the "Hobson's Choice" imposed upon the record titleholder by his sovereign (and its *alter ego* municipal taxing instrumentality).

This question when disposed of as the tribunals below have done, results in a taking of property without either due process or just compensation; and effectuates a denial of equal protection by taxing properties dissimilarly circumstanced as though they were similarly situate.

The mere statement of this Kafkaesque dilemma of the record titleholder explains the dearth of case law on the subject. Three arms or instrumentalities of the State each pursuing its own respective statutory duty present the private record titleholder with clear but equally difficult alternatives; (i) inutile idleness of his land while paying full measure of taxes; (ii) loss of his payments if the State should be determined the owner of the land; or (iii) nonpayment of taxes based upon gross overassessments and questionable title, leading to tax foreclosure and loss of the land if the record titleholder might otherwise be determined the owner thereof.

Assertion of a claim by the State puts the taxpayer's title in danger. The rules and ordinances of the Hackensack Meadowlands Development Commission (a State instrumentality) prohibit issuance of a fill or a building permit if his title is not cleared with the State, or if there is a moratorium in effect.

The Borough of East Rutherford assesses the land (and is upheld in the administrative and judicial appeals) as if there were no impediment to immediate and full use of the land.

The State has fashioned, whether knowingly or in total ignorance of the interrelated consequences, a perfect in-

strument for confiscating meadowlands by presenting the record titleholder with unreconcilable alternatives, all pointed toward loss of his land, uncompensated by the usual devices responsive to due process and just compensation.

The combination and concentration of these forces deprives the meadowland private record titleholder of due process and metes to him unequal treatment under the law. If owners outside the meadowland areas suffer moratoria against construction, such may be responsive to tax adjustment. In addition the State advances against upland owners no riparian claims. Those State claims asserted against meadowlands enjoy a demonstrated power to defer virtually indefinitely the final determination of the clouds on title as the State repeatedly changes its positions and files revised claims maps.

3. The third question is whether, if the municipality concedes on the record an error in computation of an assessment (due to a reduction in acreage as a result of a condemnation by the State); and arithmetical errors also appear on the face of the record, and they are briefed and argued, should not courts cure such errors? See *in re East Jersey Water Co.* v. *Roat, et al.*, 45 Atl. 910 (Sup. Ct. N. J. 1900) (not officially reported).

The attention of both courts below was called to these errors in the administrative opinions and decisions. For example the Division of Tax Appeals utilized a technique whereby it took raw meadowland and attributed improved, finished (i.e., diked, filled and served by streets and utilities) acreage values to it by reference to alleged comparable sale of such improved, finished acreage. It then deducted the proved costs of the necessary improvements to arrive at raw land values. One of those accepted

proved costs for deduction purposes was 900′ of diking at $50 per foot. The Division multiplied and found a deduction of $4,500 instead of $45,000! This and other errors were noted also in the Petition for Certification filed with the Supreme Court, and in the brief filed with the Appellate Division below.

The Appellate Division affirmed an arithmetical error! The Supreme Court denied certification.

This affirmance by the Appellate Division (in these cases the court of original jurisdiction) truly establishes that the hearing and review to which petitioners were entitled as of right (see N.J. Const. Art. 6, §5, par. 4 (1947)) was denied to them, and the apparent consideration given the matter by the Appellate Division was really non-existent and an illusion only.

The oft-repeated shibboleth that courts will defer to "administrative expertise" does not require affirmances of arithmetical errors. It is submitted that litigants are denied procedural due process when courts give such minimal attention to their briefed and argued grievances as to affirm arithmetical errors to which the court's attention is directed.

CONCLUSION

For the foregoing reasons this Petition for a Writ of Certiorari should be granted

Respectfully submitted,

MARVIN H. GLADSTONE,
Counsel for Petitioners.

[APPENDIX FOLLOWS]

APPENDIX

Order Denying Petition for Certification

(Filed—October 25, 1977)

SUPREME COURT OF NEW JERSEY

C-136—September Term 77

BERGEN COUNTY ASSOCIATES,

Petitioner-Petitioner,

vs.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Worrall F. Mountain, Presiding Justice, at Trenton, this 25th day of October, 1977.

STEPHEN W. TOWNSEND
Acting Clerk

Petition for Certification Filed with Supreme Court of New Jersey

(Filed—July 18, 1977)

SUPREME COURT OF NEW JERSEY

Docket No.

BERGEN COUNTY ASSOCIATES,

Petitioner-Appellant,

vs.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent,

AND

CONSOLIDATED CASES (Appellate Division Docket Nos. A-3043-73 to A-3053-73 inclusive—Remaining Captions Not Included—Set Forth in Brief and Appendix Covers Filed Below)

Sat Below:

HALPERN, ALLCORN and BOTTER, JJ.A.D.

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Petition for Certification Filed with Supreme Court of New Jersey

Grounds for Certification

R. 2:12-4 recites as grounds for certification presentation of a question of general public importance which has not but should be settled by the Supreme Court; conflict between the decision which is the subject of the Petition and any other decision of the same or a higher court; and vindication of the interest of justice.

A. Public Importance

Two questions of general public importance are presented:

1. Where, in the proper exercise of legislatively-conferred police power, a moratorium against any economic use of vacant land is imposed and enforced by a political subdivision of the State, may the vacant land thus burdened be subjected to *ad valorem* property taxes as though it was not burdened by the moratorium?

2. Where

   (a) the sovereign State of New Jersey officially asserts a claim of legal title to vacant land, record title to which is in a non-tax exempt entity; and

   (b) the State's contested claim, if valid, renders the land tax exempt; and

   (c) neither the State nor the record titleholder may obtain judicial disposition of the contested claim for many years notwithstanding diligent prosecution by the private claimant; and

(d) a political subdivision of the State which is a constituent element of the local taxing entity as well as a beneficiary of the taxes assessed, by formal regulation prohibits all economic use of either the land area claimed, or the land areas not claimed which are part of the same tax lot; and

(e) no mechanism exists whereby taxes may be deferred pending judicial resolution of the title dispute, i.e., the question whether the land is taxable or tax-exempt, except at the peril of strict foreclosure;

Then, given all of the foregoing, may the land rendered thus inutile be properly assessed for local *ad valorem* taxation as though it was immediately and fully marketable and buildable?

Both of the foregoing questions are of *general* public importance because, as to the first, approximately 10,000 acres of land were involved during the 2½-year moratorium* (all said years being encompassed by the years under appeal); and, as to the second, approximately 27,000 acres have long been and are still affected.

Neither question has been settled by the Supreme Court. Both questions should be so settled.

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* The ultimate effective period of the "Freeze" was May 1, 1970-November, 1972. Although initially scheduled to terminate May 1, 1972, it was thereafter twice extended. See *Meadowlands Reg., etc.* v. *Hackensack, etc., infra* (119 N. J. Super. 572 at pp. 575-6).

B. Conflict

In declining to entertain (and, indeed, in denigrating) the argument that valid restrictive land use regulations create legally appropriate bases for *ad valorem* property tax relief, the decision below conflicts with the numerous holdings of the Appellate Division and of this Court wherein zoning restrictions are established as an essential element of the valuation process in both *ad valorem* property taxation and eminent domain.

C. Interest of Justice

It is unjust to assess nonsalable and nonusable vacant land as thought it was salable and usable, where the restrictions against sale and the prohibitions against use are created by a constituent element of the taxing entity itself, or of the State of New Jersey, which is the creator of the political subdivision and *alter ego* thereof.

It is unjust to confront the taxpayer with the Hobson's Choice of paying taxes on non-economic vacant land which the State contends is exempt from taxation, with no recovery thereof if the State is correct, or failing to pay at the peril of losing the title which he may hold, through strict foreclosure, by a creature of the State and the *alter ego* thereof.

D. Equal Protection

Although this is a Petition for Certification and not an appeal, the Petitioners nevertheless hereby raise the issue of denial of equal protection of the laws governing local taxation of real property, that issue having been set forth

as such in all of the proceedings below. Unreasonable classifications of properties essentially similarly situate for the purpose of imposing a disproportionately high burden of taxation on some of them would violate the equal protection clause of the 14th amendment as well as N.J. Const., Art. 8 §1 ¶1(a). It is no less a violation to refuse to classify properties dissimilarly situate, for the purpose of imposing the same tax burden on certain of them having substantially lesser values, as that imposed upon the properties enjoying greater values.

Here, the assessment by respondent of Petitioners' nonsalable, nonbuildable vacant lands according to the same standards applied to salable and buildable vacant lands, violates both cited constitutional provisions.

Statement of Procedural History

The several Petitioners filed timely appeals with the Bergen County Board of Taxation contesting multiplications of prior municipal assessments of various parcels of raw, vacant meadowlands for the tax years 1969 through 1972. Petitions in respect of virtually all parcels and years and, as to some parcels and years cross-petitions, were timely filed with the Division of Tax Appeals by the respective parties. The Division consolidated the petitions for 1969 through 1972 for hearings which were held on various dates August through October 1973. Prior to closure of those hearings County Board petitions had been filed for the tax year 1973 and the parties therefore stipulated that the anticipated judgments for 1972 would also apply to 1973. Similar petitions as to most, if not all parcels (and, as to some, cross-petitions) were thereafter

timely filed for the tax years 1974 through 1976 with the Division of Tax Appeals from adverse "state board pending" judgments entered by the County Board, and those remain pending among the huge State Division backlog. At this writing, 1977 County Board petitions are being prepared for filing on or prior to the August 15, 1977 statutory deadline.

The State Division judgments covering the tax years 1969 through 1972 (the latter, by stipulation, being applicable to 1973) were entered May 13 and October 16, 1974. Most of the appeals therefrom to the Appellate Division were timely filed; a few (by apparently inadvertent confusion in captioning the Notices of Appeal), may not have been timely filed.

The Appellate Division affirmed all of the State Division judgments (including one based upon a manifest and briefed arithmetical error and others based upon manifest, briefed and admitted incorrect computations of acreage) by opinion dated March 3, 1977.

Thereafter a somewhat confused effort by counsel of record at the time, to file a Notice of Petition for Certification (Pa1) ensued. Misconceiving R. 2:12-3 to limit the time for filing the Notice to 20 days next following receipt (rather than rendition) of the Appellate Division decision, counsel presented the Notice directly to an Associate Justice of this Court on the 20th day after its receipt of the decision, but the 21st day after the date thereof. Apparently also under the incorrect impression that the presentation of the Notice in the manner indicated would result in its being marked "filed" that date, former counsel believed it had timely filed the Notice. Substituted counsel, being so advised, presented for filing a Substitution of Attorney (Pa21) together with a motion (Pa4-10) to ex-

tend the 10-day time limit for filing the Petition. The Notice, however, not having been timely submitted for filing, the Clerk properly declined to file the same, or to file either the Substitution or the motion, since the non-filing of the Notice of Petition left this Court without a matter or docket in which the Substitution or the motion could be filed. The procedural dilemma was thereafter solved by filing a motion (Pa11-20) to extend the time limited for filing the Notice of Petition to permit it to be filed, thereby permitting the filing of the Substitution and the motion to enlarge the time limited for filing the Petition. Both motions (to file the Notice out of time and to enlarge the Petition filing time) were apparently granted by this Court on June 17, 1977, and the Substitution was apparently filed, but no notice thereof was sent to substituted counsel*, they having been orally advised of these dispositions by the Clerk's Office on July 7. Since preparation of the Petition was deferred pending notice of disposition of the motion to file the Notice out of time, and Petitioners were given ten days from date of telephoned notice of the June 17 dispositions of the two motions, the grant of the petition-extension application was effectively negated.

Statement of Facts

This Petition seeks certification of the Appellate Division's affirmance of numerous judgments of the State Division of Tax Appeals adjudicating taxable values of

* Former counsel has advised that after inquiry and following a search of its files, it did not receive the June 17 order either.

diverse parcels of vancant* land, all located in the East Rutherford portion of the Hackensack Meadows.

All of the parcels were, during 2½ of the four tax years appealed, subject to a prohibition against landfilling or otherwise improving the same, lawfully imposed by a Hackensack Meadowlands Development Commission moratorium. See *Meadowland Regional Development Agency* v. *Hackensack Meadowlands Development Commission,* 119 N. J. Super. 572 (App. Div. 1972), *cert. den.* 62 N. J. 72 (1972).

The East Rutherford tax assessor as well as the three tribunals below, all declined to recognize any diminution in the taxable value of any of the parcels for the 2½ years in question, by reason of the prohibition against filling or building.

Virtually all of these vacant parcels were also burdened, for all of the years in question, by claims of legal title to all or portions thereof, repeatedly officially asserted by the State of New Jersey through the Natural Resource Council, purportedly pursuant to N.J.S.A. 13:1B-13.4.** Fur-

* A small portion of one parcel only. Lot 24A in Block 105B is improved with a temporary bank trailer, 19 parking stalls adjacent thereto and some landscaping.

** Even the above-footnoted Lot 24A in Block 105B (whereon the temporary bank trailer stands), in respect of which a prior quit-claim deed was obtained, was affected, because (1) the 1970 "gray-white map" and the 1973 claims overlay published by the Council asserted claim to all or part thereof; (2) none of the maps indicated those areas previously quit-claimed or granted by overlay or otherwise; and (3) the State has, until recently, challenged the validity of its prior grants and quit-claim deeds as "gifts" of public trust properties. See, e.g., *New Jersey Sports & Exposition Authority* v. *Smila-Rutherford, Inc., et als.* (consolidated cases) (unreported cases App. Div. Docket nos. A 1651-75 and A 3555-75).

ther, and perhaps more importantly, the policy of the Hackensack Meadowlands Development Commission has been to refuse applications for "zoning certificates" unless there is presented therewith either "i. [a] duly executed riparian instrument releasing the State's interest; [or] ii. [a] permit or other authorization duly executed by the Natural Resource Council authorizing the applicant to proceed with the placement of certain improvements; [or] iii. [a] final judgment rendered by a court of competent jurisdiction declaring that the State has no interest in the subject property." This requirement, theretofore unofficially applied, was subsequently codified as N.J.A.C. 19:4-4.134(b)(3). N.J.A.C. 19:4-4.133(a) further codified an existing prohibition against even commencement of placement of fill in these properties without a zoning certificate.

All efforts to reasonably expeditiously obtain adjudications of tideland title disputes have been unavailing because of the State's repeated changes of position and the lack of judicial manpower to handle the great host of cases.*

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* This court may or should take judicial notice of the fact that, despite the authorization of L. 1973, c.76, §1 and c.78, §1, N.J.S.A. 2A:21, to the Governor to appoint at the request of the Chief Justice, six additional judges to hear and decide tideland disputes, no such appointments have ever been made. The result has been delays of many years in efforts to adjudicate titles. Further, the original statutory mandate required the Natural Resource Council to "make its determinations as to interest of the State in meadowlands . . . on or before Dec. 31, 1974." This deadline has been annually adjourned by Amendment and now reads "December 31, 1977". N.J.S.A. 13:1B-13.6. The Council's repeated, contradictory claims map-

(Footnote continued on following page)

N.J.S.A. 13:17-1 (the Hackensack Meadowland Reclamation and Development Act) was, after some considerable delays, approved January 13, 1969. L.1968, c.404. Section 103 of the statute purported to make it retroactively effective as of July 1, 1968.

The Act creates a "Hackensack Meadowland District" comprising portions of municipalities in Bergen and Hudson Counties on both sides of the Hackensack River. N.J.S.A. 13:17-4. It also creates the Hackensack Meadowlands Development Commission and vests it with broad supervening (as against the constituent municipalities) planning, zoning and other land use-related powers. N.J.S.A. 13:17-5 and 6. The statute and the powers it confers were held constitutional in *Meadowlands Regional Development Agency* v. *State,* 112 N. J. Super. 89 (App. Div. 1970), *affirmed* 63 N. J. 35 (1973), *appeal dismissed* 414 U.S. 991 (1973).

Article 9 of the Act provides for "intermunicipal tax sharing" with respect to ratables located in those areas of the constituent municipalities which are encompassed by the Hackensack Meadowlands District. N.J.S.A. 13:17-60 et seq. Although the intermuncipial tax-sharing provisions are somewhat complex and obtuse, they are based upon the proposition that the anticipated regional planning and execution thereof, together with other activities of the Commission would ultimately result in ratable increases

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(Footnote continued from preceding page)

ping project results have been repeatedly rejected. See *State* v. Council (Superior Court docket No. L-12561-68, 9/8/71, appealed on other grounds 60 N. J. 199 (1972)); *City of Newark* v. *Natural Resource Council,* 133 N. J. Super. 245 (L. Div. 1974) and the several prior and subsequent interlocutory orders therein.

from which the constituent municipalities should benefit pursuant to equitable formulae. See "Purpose", etc., N.J.S.A. 13-17-60(a).

An essential element of the intermunicipal tax-sharing scheme was the creation of a "base year" against which the constituent municipalities' obligations for each subsequent year ("adjustment year") would be determined. N.J.S.A. 13:17-61(a) and (e).

A "guarantee payment" by the intermunicipal account to each constituent municipality is then provided for by N.J.S.A. 13:17-68. That provision seeks to codify (with some exceptions and adjustments) the concept or notion that no constituent municipality should receive less tax revenues from those of its ratables lying within the District, in any "adjustment year", than the revenues which would have been produced by those ratables as reflected by the tax duplicate in the "base year".

In other words, the "base year" ratables became the "floor" for each constituent municipality, and there was no ceiling.

The retroactive effective date of July 1, 1968 is significant because the "base year" initially legislated was 1969. (The "base year" was changed by the 1972 amendment to 1970). The taxable values of properties for 1969 were, theoretically, fixed as of October 1, 1968, N.J.S.A. 54:4-23. The theoretical October 1 "valuation", however, is never as a matter of practice fixed *on* that date, but is fixed *as of* that date by assessments which are filed with the County Boards usually toward the middle of the following year.

To maximize the guaranteed minimum to be receivable under the intermunicipal tax-sharing provision, most of

the constituent municipalities "revalued" those ratables within the district in early 1969, "as of" October 1, 1968. The temptation to maximize meadowlands assessments immediately it appeared the Meadowlands bill might, after long debate, become law was understandably and necessarily overwhelming.

East Rutherford did its "revaluation" in early 1969 and the result was, not merely increases but, literally, multiplications of assessments of properties east of Route 17, i.e., that area of the municipality within the Hackensack Meadowlands District.

Most, if not all of the vacant properties which are the subject of this Petition were the subjects of tax appeals and judgments for the years 1966-68. The 1969 "revaluation" magnified the assessments fixed by judgment for those three prior years. The grossly inflated assessments were largely affirmed (there were a few significant exceptions) by the Bergen County Board and the State Division, and by the Appellate Division in the decision which this Petition addresses. These affirmances of multiplied assessments (as compared with the 1966-68 adjudications) were notwithstanding the properties have, since 1970, been rendered nonsalable and unusable by administrative moratoria, prohibitory regulations, and inability to move tideland title disputes through the courts.

ARGUMENT

POINT I

The decision below should be certified because it holds, in effect, that vacant lands subject to moratoria against development are nevertheless to be assessed at the same values as lands not so restricted.

Prohibitions against construction during planning phases, if reasonably limited in duration, may be valid exercises of the police power. *Deal Gardens, Inc.* v. *Loch Arbor,* 48 N. J. 492 (1967). The particular prohibition here involved was held invalid in *Hackensack Regional, etc.* v. *Hackensack Meadowlands Dev. Comm.,* 119 N. J. Super. 572 (App. Div. 1972), *cert. den.* 62 N. J. 72 (1973).

In disregarding the effect of an official, valid prohibition against development upon the fair market values of these vacant meadowlands during two of the years in question, the court below held:

> "The activities of the Hackensack Meadowlands Development Commission in planning for the comprehensive growth and development of the area, could very well have caused an appreciation of the value of constituent parts of the meadowlands. . . ." (Pa27)

There is no evidence in this record of any such presumed "appreciation" of nonbuildable lands. But even if the conjecture be sound, it misses the most important point that property tax assessment is an annual, not a perennial matter. If, therefore, relief is granted during the moratorium period and, as a result of the "planning" supposed

to be going on during the moratorium the values of the properties increase, then the assessments should likewise be increased in such subsequent tax year or years. But to opine that, during a period of prohibition when nothing may be done but await the fruits of the "planning" effort to find out how much it will hurt or help, borders on the ludicrous.

The two year moratorium established by the Hackensack Meadowlands Development Commission burdened these vacant meadowlands in the same manner as lands subjected, *e.g.,* to the "flood hazard" moratorium. In *Cappture Realty Corp.* v. *Bd. of Adj. Elmwood Park,* 126 N. J. Super. 200 (Law Div. 1973), *affirmed* 133 N. J. Super. 216 (App. Div. 1975) the trial court correctly observed:

> "Plaintiff also argues it is being assessed for taxes as if the land were not under a moratorium, and is paying property taxes under protest. It appears obvious that the moratorium establishes as a matter of law that the subject land is temporarily restricted, and presumably the tax assessor establishes true value accordingly for that period. . . . The tax authorities cannot have it both ways." 126 N. J. Super. at p. 217.

This question was not addressed on appeal in the *Cappture* case.

The trial court also noted that if "the tax assessor fails to take the moratorium ordinance into account, plaintiff may have been damaged by such excess assessment. Plaintiff has an avenue for redress, through tax appeals, which should be sufficient."

They were obviously insufficient in these consolidated matters, Petitioners having raised the issue below in all three tribunals to no avail. Must the Petitioners, their properties having been zoned into temporary sterility, accept that state of affairs and continue to pay taxes as though their inutile properties were fully salable and buildable? Cf. *Harrington Glen Inc.* v. *Board of Adj. of Leonia,* 52 N. J. 22, 21 (1968).

The moratorium coupled with the Hackensack Meadowlands Development Commission regulation prohibiting filling or other development absent an instrument releasing the State's claim (or a Natural Resource Council permit) has rendered most of these vacant properties unsalable, and all of them nonbuildable during the tax years in issue. Real property being annually assessable, relief may and should be granted during those years when those disabilities obtain.

Since the holding in *Deal Gardens, supra,* cautiously validating development prohibitions of limited duration during planning and replanning periods, we have seen such moratoria being imposed with increasing frequency. Many developing municipalities have established such while replanning and rezoning to conform with the requirements of *So. Burlington Cty. N.A.A.C.P.* v. *Mt. Laurel Tp.,* 67 N. J. 151, *appeal dismissed* and *cert. den.* 423 U. S. 808 (1975). The implications inherent in the decision below, to which certification is here sought, is that vacant lands frozen from development during such prohibitory periods may nevertheless have their assessments validity multiplied because at some unknown future time, the fruits of such replanning may increase the values thereof.

That proposition reserves review by this Court.

POINT II

Certification should be granted because of the far-reaching implications of that portion of the decision below which erroneously equated *State* claims of riparian title (the very assertion of which precludes development by law and which, if established, would render the property tax-exempt) with private title disputes (which do not preclude development and which would not render the property tax-exempt whichever private claimant should prevail); and *Damsil* v. *Secaucus,* followed below, should be reviewed.

In the opinion to which certification is sought, the Appellate Division held that Petitioners' properties burdened by the State's claims of riparian title are not entitled to any reduction from "market value" by reason thereof. In so holding, the Appellate Division relied upon *Town of Secaucus* v. *Damsil, Inc.,* 120 N. J. Super. 470 (App. Div. 1972), *cert. den.* 62 N. J. 90 (1972). It is the contention of Petitioners that the holding in *Damsil* is erroneous and should be overruled and, in any event, should have been held inapplicable to the facts at bar.

The Secacus tract involved in *Damsil* which had been purchased for $35,500 from the town at a public sale was expressly sold subject to "tidelands or riparian rights which might be claimed by the State of New Jersey". Subsequently, the town assessed the property at $92,000, that assessment being thereafter reduced to the sales price of $35,500 by the Division of Tax Appeals.

The Appellate Division reversed, holding that the "bona-fide sale" test of value referred to in N.J.S.A. 54:4-23 meant the sales price of the land "including all inter-

ests therein, not the sales prices of the purported owner's title in a case where, as here, there is a cloud on that title." The Appellate Division also stated (by way of conclusion and without discussion) that the fact that the sale was subject to outstanding rights of the State, rather than of a private party was not of "any significant relevance". It then remanded the case to the Division of Tax Appeals for entry of judgment in the amount of $90,000, the figure previously conceded by the parties to represent the value of all interests in the land.

The *Damsil* opinion does not reflect the fact that the appellant had theretofore applied for a deed from the State; that its application had been granted and awaited only the signature of the Governor; and that it was in fact finalized after the tax year in dispute.

Of particular importance to the Petitioners and to all record title holders in the Hackensack Meadows, is the quoted statement equating State claims of riparian title with private claims of title. These two classes of clouds on title have enormously different effects upon the uses and the values of property.

The Hackensack Meadows, some 27,000 acres in size, have for many years been the subject of persistent and continuing title disputes between private claimants and the State of New Jersey. *O'Neill* v. *State Highway Department*, 50 N. J. 307 (1967). In a title dispute between private claimants, the adverse claim has absolutely no effect whatever on the power of the taxing district to either assess or tax the property. Regardless which of the private individuals may ultimately prevail, the property will remain subject to assessment and taxation. Where, however, the State is the adverse claimant, the

property would be exempt from taxation should it prevail. N.J.S.A. 54:4-3.3.

Neither *Damsil* nor the Court (or the Division) below recognized either that (a) a riparian cloud (unlike a private title dispute) is an assertion by the State of the property's tax-exempt status; or (b) a State riparian claim (unlike a private dispute) invokes a prohibition against filling or building under N.J.A.C. 19:4-4.133 and 4.134(b)(3); or (c) title-clearing procedures in tideland disputes are infinitely more compelx and involve years of delays compared with ordinary quiet title actions involving private disputes.

According to the *Damsil* holding (and the decision below which followed it) the record titleholder must pay taxes based upon the full theoretical market value of the property, as though salable and buildable, while he is disabled through no fault of his (and only because the State rather than a private party claims title to it) from making any use of it whatsoever.

The record titleholder is faced with the "Hobson's Choice" of either paying full taxes on land he cannot sell, mortgage, subdivide, fill or otherwise use, at the peril of an ultimate adjudication that he does not own it, and that it has been exempt from taxation (in which event he loses both his land and all of the taxes he has paid); or refusing to pay taxes and losing such interest in the property as he may have, by way of strict foreclosure by the taxing district.

The *Damsil* holding which creates this "Hobson's Choice" contravenes the underlying rationales of decisions of this Court, and of statutory and common law principles governing valuations of real property. The

general rule of evaluation of real property for assessment purposes is set forth in N.J.S.A. 54:4-23:

> "The assessor shall . . . determine the full and fair value of each parcel of real property situate in the taxing district at such price as, in his judgment, it would sell for at a fair and bona fide sale by private contract. . . ."

In construing that language, this Court has consistently held that the true value of real property is the price which would be paid by a buyer wiling but not obliged to buy and a seller willing but not obliged to sell. *Greenwich Township* v. *Gloucester County Bd. of Taxation,* 47 N. J. 95 (1966); *Gibraltar Corrugated Paper Co.* v. *North Bergen Tp., Hudson County,* 20 N. J. 213 (1956); *City of New Brunswick* v. *State Division of Tax Appeals, Dept. of Treasury,* 39 N. J. 537 (1963); *City of Newark* v. *West Milford Tp., Passaic County,* 9 N. J. 295 (1952); *North Bergen Tp. in Hudson County* v. *Bergen Blvd. Holding Co.,* 133 N. J. L. 569 (E. & A. 1946).

In determining value, consideration is given to the actual condition in which the owner holds it. *Colwell* v. *Abott,* 42 N. J. L. 111, 115 (Sup. Ct. 1880); *State* v. *State Board of Tax Appeals,* 134 N. J. L. 34, 43 (Sup. Ct. 1946); *Aetna Life Insurance Co.* v. *City of Newark,* 10 N.J. 99, 110 (1952).

Thus, *e.g., in Englewood Cliffs* v. *Estate of Allison,* 69 N.J. Super. 514 (App. Div. 1961), the land was burdened by significant legal restrictions and public rights, and the court ordered the assessment of approximately $52,000 reduced to $5,000.

An essential element in determining the true value of property is the fitness and availability thereof for particular uses, whatever the actual use may be. *City of Clifton* v. *North Jersey Dist. Water Supply Commission,* 104 N. J. Super. 147 (App. Div. 1969); *Appeal of City of East Orange,* 80 N. J. Super. 210 (App. Div. 1963); *Div. of Tax App.* v. *Ewing* Tp., 72 N. J. Super. 238 (App. Div. 1962). *Delaware, etc. Railroad Company* v. *City of Hoboken,* 16 N. J. Super. 543 (App. Div. 1951).

Applying these principles to the case at bar, Petitioners are entitled to relief from the excessive assessments of their properties. In determining the true value of Petitioners' properties, no consideration was given to their actual condition as held by them. These properties, like much of the Hackensack Meadows, are claimed by the State. The State, through the Department of Navigation, notified all town assessors and all title companies of its claims in 1962. As a necessary result, none of the private record titleholders have been able to make any economic use of their properties in the absence of a grant or quitclaim deed from the State, for some 15 years.

The regulations of the Hackensack Meadowlands Development Commission and, in particular, N.J.A.C. 19:4-133 and 4:134(b)(3) prohibiting filling in or building on any lot in which the State claims an interest, however small, are in the nature of zoning ordinances and govern Petitioners' permissible uses of their lands. They necessarily affect, therefore, those lands. Cf. *State* v. *Gorga,* 26 N. J. 113 (1958); *Overpack Land Corp.* v. *Village of Ridgefield Park,* 104 N. J. L. 402 (E. & A. 1928). They should have been considered by the assessor in making that determination, and by the three lower tribunals in adjudicating appeals from his assessments.

The decisions in both *Damsil* v. *Secaucus* and the cases below erroneously equated tideland disputes with private title disputes, and they should be addressed by this Court because they affect an entire region of the State; they contravene established principles of *ad valorem* property taxation; and they are and will continue to be productive of gross inequities and injustices if they remain unreviewed.

POINT III

The 1968 State Division judgments should be accorded the benefit of the Freeze Act under *Rothman* v. *Borough of River Edge.*

The taxable values of virtually all of the properties here in issue were adjudicated for the tax years 1966, 1967 and 1968, by the same judge of the Division of Tax Appeals who heard the appeals and rendered the decisions affirmed below in this case.

Former counsel's failure to brief the applicability of the Freeze Act, N.J.S.A. 54:2-43 should be excused because *Rothman* v. *Borough of River Edge,* 149 N. J. Super. 434 (App. Div. 1977) had not yet been decided. That opinion is published in the July 8, 1977 advance sheets.

Prior to *Rothman* it was generally conceived that an assessment established by a judgment rendered in respect of consolidated appeals covering more than one year, was "frozen" by the Act for only the first such year, plus the two succeeding years (even if one of them was a year covered by the judgment). By way of illustrating that conception if, as to the instant tax lots, judgments were rendered for 1966, 1967 and 1968, the three year "freeze"

period would have been exhausted and the taxing district was at liberty to multiply, as it did, the assessments for 1969, subject to appeal on the merits.

Rothman holds otherwise. There, 1970 and 1971 assessments were adjudicated in the Division and final judgments rendered, based upon a prior 1969 judgment, the Division having applied the Freeze Act. The Appellate Division reversed and remanded by an unreported opinion on June 18, 1975, for taking of testimony and fixing of the assessment without regard to the Freeze Act. The parties then settled at a stipulated value of $800,000. The settlement figure was reduced to judgment for 1970 and 1971 on August 13, 1975. In the interim the taxpayer, but not the borough, had appealed the 1972 and 1973 assessments, and the borough argued that the 1971 judgment governed the two subsequent years under the Freeze Act, notwithstanding it had not appealed those two years. The Appellate Division agreed, thus holding that the 1971 and 1972 judgment froze the assessments for 1973 *and* 1974. Thus, the control year for application of the statutory 3-year freeze was 1972 and not 1971.

Rothman makes a lot of sense for reasons not set forth in the opinion as well as those articulated therein. In the absence of a *genuine** municipal-wide revaluation increases in values resulting from general appreciation of real property are fairly uniform and continuation of the assessments avoid the discriminatory effects of individual adjustments to "true value." Annual equalization adjustments for county and regional tax purposes even out

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* *i.e.* not the kind of partial "revaluation" designed to "maximize the minimum" guarantee under the intermunicipal tax sharing provision of the Hackensack Meadowlands Development Act, *supra.*

intermunicipal disparities during the years between general, municipal wide revaluations which bring all properties uniformly up to "true value."

Application of *Rothman* to the cases at bar is particularly appropriate because of the double-pronged freeze on development of these vacant properties, hereinbelow briefed. Indeed, nothing could be more appropriate than to accord the benefits of the "Freeze Act" to vacant lands "frozen" from development.

Application of *Rothman* to the cases at bar would accord each tax lot which was the subject of a 1968 State Division judgment, the benefit thereof for 1969 and 1970. Those assessments should be thereafter continued until the properties are "unfrozen" from the regulatory prohibition against improvement.

It is respectfully suggested that this Court exercise its original jurisdiction to permit filing of the 1968 State Division judgments, N. J. Const., Art. 6, §6, par. 3, to the end that the Freeze Act may be applied to those assessments covered thereby, for the tax years 1969 and 1970.

POINT IV

Although it may appear that the facts and some of the issues were seriously addressed by the State Division and the Appellate Division, that appearance is deceptive and petitioners' appeals were in fact given little consideration.

It is recognized that the highest court of the State cannot and does not concern itself on a Petition for Certification with mundane points of error below.

It should, however, concern itself with the increasing tendency (by reason of well-publicized heavy work loads) of the State Division to accord superficial attention to important factual and legal questions; and of the Appellate Division to affirm pro forma. It is submitted that much of the verbiage in the opinions below merely serves to camoflage less-than-adequate attention to the facts and consideration of the implications of the holdings.

In the conclusion of their brief below Petitioners noted, *inter alia,* that Judge Savino's "decision is replete with factual errors, inconsistencies and omissions of material deductions." Most of them were well-detailed in the 71 pages preceding that conclusion.

Among the many "factual errors" was an uncontested and incontestible *arithmetical error.* It was called to the Appellate Division's attention at page 13. Judge Savino had taken a questionable "improved" value of $60,000 per acre and deducted therefrom the costs of non-existent "improvements". One such was diking wherein he accepted expert testimony of a $50 per foot cost. He multiplied 900′ x $50 and came up with $4,500 instead of $45,-

000 as a "deduction." See page 13 of Petitioners' brief below.

The Appellate Division affirmed this mathematical error! If we assume, as we must, that the court below can both read and multiply, the only explanation for affirming a multiplication error which was briefed, is inattention to the facts of the case as briefed.

The brief below was replete with examples of similar, if slightly less obvious, mathematical miscalculations.

A variant, for example, is found briefed at p. 53. The Borough continued to assess 3.63 acres of Lot 26 NC in Block 108 as 11.14 acres. The difference in acreage resulted from a 1968 taking by the State Highway Department to widen Route 3, and the assessor had failed to adjust the acreage, notwithstanding the Borough was a party to the condemnation proceeding. Counsel to the Borough acknowledged that "it looks to me like they didn't adjust this. . . ." The discrepancy was called to the attention of the Appellate Division as well as the State Division. The former's affirmance of the latter's error in effect ajudicates 3.63 acres to be 11.14 acres!

Similarly, the appellants' brief below noted, at pages 32-34, that 8.96 acres comprising Lots 6 & 7 in Block 106B, were assessed at 10.85 acres, the difference being a railroad right-of-way incorrectly attributed to the property. In declining to correct the incorrect computation, the Court below in effect ajudicated 8.96 acres to be 10.85 acres.

It should be noted that every erroneously-attributed acre increased the assessment by $60,000 under the questionable method used by the Division.

There is no point reiterating in this Petition (the size of which is limited by Rule) the great host of similar errors and others of a simple factual character in the State Division's opinion. They are well-detailed in the appellants' brief below. Petitioners are entitled to more than a rubber-stamp approval of mathematical and other errors which substantially inflate their tax liabilities on vacant lands they cannot use, through no fault of their own. Indeed, it is a denial of due process to preclude them from fair considerations of their proofs.

CONCLUSION

For the foregoing reasons it is respectfully suggested certification should be granted and the consolidated appeals remanded to the Division of Tax Appeals for reconsideration of its determinations as to the taxable values of all properties before it, for all of the tax years in question; and for decision made upon all relevant elements of the valuation process.

Respectfully submitted,

GLADSTONE HART MANDIS RATHE & SHEDD
A Professional Corporation
Attorneys for Petitioners
By MARVIN H. GLADSTONE

Petition for Certification Filed with Supreme Court of New Jersey

Certification

I certify that the Petition for Certification filed in the above-entitled actions present substantial questions, and are filed in good faith and not for purposes of delay.

MARVIN H. GLADSTONE

Certification

I certify that I have this date served two copies of the foregoing Petition for Certification and Appendix thereto, upon William F. Hyland, Esq. and Alfred A. Porro, Esq., by sending the same first class mail to their respective office addresses.

MARVIN H. GLADSTONE

Dated: July 18, 1977.

Opinion and Judgment of Appellate Division, Superior Court

(Filed—March 3, 1977)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

BERGEN COUNTY ASSOCIATES,

Petitioner-Appellant,

v.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

A-3043-73
A-3046-73
A-3056-73

BOROUGH OF EAST RUTHERFORD,

Petitioner-Respondent,

v.

BERGEN COUNTY ASSOCIATES,

Respondent-Appellant.

A-3044-73
A-3047-73
A-3050-73

Opinion and Judgment of Appellate Division,
Superior Court

BOROUGH OF EAST RUTHERFORD,

Petitioner-Respondent,

v.

EAST RUTHERFORD INVESTMENT CORPORATION,

Respondent-Appellant.

A-3045-73

BOROUGH OF EAST RUTHERFORD,

Petitioner-Respondent,

v.

BRANCASONS, INC.,

Respondent-Appellant.

A-3048-73

BRANCASONS, INC.,

Petitioner-Appellant,

v.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

A-3049-73

Opinion and Judgment of Appellate Division,
Superior Court

BERGEN COUNTY ASSOCIATES SUNOCO,

Petitioner-Appellant,

v.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

A-3051-73

DEANNA INDUSTRIES, INC.,

Petitioner-Appellant,

v.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

A-3052-73

BOROUGH OF EAST RUTHERFORD,

Petitioner-Respondent,

v.

DEANNA INDUSTRIES, INC.,

Respondent-Appellant.

A-3053-73

Opinion and Judgment of Appellate Division, Superior Court

EAST RUTHERFORD INVESTMENT CORPORATION,

Petitioner-Appellant,

v.

BOROUGH OF EAST RUTHERFORD,

Respondent-Respondent.

A-3055-73

Argued November 16, 1976—Decided Mar 3 1977

Before Judges Halpern, Allcorn and Botter.

On appeal from Division of Tax Appeals, Department of the Treasury.

Mr. David Carmel argued the cause for appellants (Messrs. Demetrakis & Dollinger, attorneys).

Mrs. Tonita F. Conaghan argued the cause for respondents (Mr. Alfred A. Porro, Jr., attorney).

PER CURIAM

These 13 appeals,[1] which we ordered consolidated, were taken by taxpayers from various judgments of the Division of Tax Appeals (Division). They involve vacant parcels of land (except for a temporary bank trailer and parking area on the parcel designated Block 105B, Lot 24A located in the Hackensack Meadowlands. On this appeal the taxpayers contend that the assessments on the various parcels involved were excessive. The assessments were fixed by the administrative judge after hearings held on separate appeals and cross-appeals to the Division from judgments of the Bergen County Board of Taxation.

[1] This court previously ordered dismissed the appeal, and cross-appeal by the municipality, bearing docket number A-3054-73, pertaining to Block 107, lots 92 and 93.

Opinion and Judgment of Appellate Division, Superior Court

The judge fixed $60,000 per acre as the market value of improved property in 1968 and 1969. This was based primarily on two sales in the area, one of which was Block 106A, Lots C and 3B, at $60,000 per acre for 4.8 acres. Appellants contend that the judge erred in using the sales as comparables and contend that the evidence does not support the conclusion that $60,000 per acre was the fair market value of improved property.

We disagree. This finding was supported by sufficient credible evidence. The taxpayers' own expert witness, Peter C. Robinson, testified on direct and on cross-examination that he used $60,000 as the value of property in an improved condition. He said that the "$60,000 improved land figure is derived from the comparables* * *" and that "it's a consenus of the market" for improved property which is accessible by roads and is served by connected utilities. He testified: "I attributed about $60,000 as the going market value at that time."

Appellants also contend that the judge erred in failing to make allowance from market value for properties which are burdened by the state's claim of riparian rights. We find no error in this regard, however. The law requires that property be assessed at its "full and fair"

market value. N.J.S.A. 54:4-23. The value of the land is to be assessed, not a particular interest in the land. The assessment should represent the value of all interests in the land. *Secaucus* v. *Damsil, Inc.*, 120 N. J. Super. 470 (App. Div.), certif. den. 62 N. J. 90 (1972); *In re Appeal of Neptune Tp.*, 86 N. J. Super. 492, 499 (App. Div. 1965); *Stack* v. *Hoboken*, 45 N. J. Super. 294, 300 (App. Div. 1957). There is also no merit to the contention that the imposition of taxes on the property violates appellants' due process rights because the State has asserted title to the properties as riparian lands. Appellants contend that the property should be deemed exempt, or should be assessed at minimal values, until the title dispute is resolved. But the evidence shows that appellants have sold and substantially developed similar property despite such claims. Moreover, appellants may succeed in refuting the State's claims.

Appellants also contend that the value of the properties should have been depreciated by a factor reflecting the freeze on development due to temporary zoning regulations of the Hackensack Meadowlands Development Commission applicable to certain portions of the meadowlands during a planning phase. See *Meadowland Regional Development Agency* v. *Hackensack Meadowlands Development Commission*, 119 N. J. Super. 572 (App. Div.), certif. den. 62 N. J. 72 (1972). This contention was rejected below in the absence of proof that property values fell because of the temporary halt in development. The activities of the Hackensack Meadowlands Development Commission, in planning for the comprehensive growth and development of the area, could very well have caused an appreciation of the value of

constituent parts of the meadowlands, despite, and even during, a temporary stay of development. We find the state of the evidence justified the ruling below.

Finding no merit to appellants' contentions which are common to all appeals, we consider next whether valuations fixed on specific properties did not conform to or were not supported by credible evidence. Before dealing with these contentions, however, it is necessary to enumerate the specific parcels of land which are the subject of these appeals.

We are dealing with 13 appeals, although 18 separate parcels of land were evaluated below. Separate tax appeals had been filed for each of the various properties for the years 1969 through 1973, and at the hearing below it was stipulated that the 1972 assessments would also apply to 1973. The parcels of land ranged in size from 3.19 acres (Block 106B, Lot 11) to 34.90 acres (Block 108B, Lot 26BD).

The Division of Tax Appeals had assigned different docket numbers to each of the tax appeals. In appealing from the judgments below, the notices of appeal specified the particular docket numbers in the Division of Tax Appeals from which each appeal was taken. The parcel of land involved and the tax years in question were not specified in the notices of appeal. The notices simply say that a named taxpayer appeals from a final judgment entered in the Division of Tax Appeals "in the within matter" and state the date of the judgment below. In order to determine exactly what assessments were appealed, it was necessary to corrolate the docket numbers assigned to each tax appeal in the Division with specific parcels of property involved in that appeal.

Opinion and Judgment of Appellate Division, Superior Court

Despite the fact that only 13 appeals are before this court, appellants' brief and appendix list captions for 17 separate appeals. Although not appearing in the notices of appeal, appellants also assigned to each of the 17 captions a designated parcel of land allegedly involved in that appeal. However, we find that these designations do not correspond to the notices of appeal. In fact, no appeal has been taken from assessments fixed for some of the parcels which were involved in the proceedings below. In some cases, such as in Docket Nos. A-3043-73, A-3044-73 and A-3055-73, appeals were taken from judgments entered in cases involving the same parcel of land, for different tax years. The three docket numbers mentioned were taken from judgments entered in cases below bearing Docket Nos. L-104-72, L-105-72, L-88-71, L-89-71 and L-98-73, all of which deal with one parcel of land, Block 105A, Lot 31.

The appeals before us involve the following properties, with corresponding docket numbers of this Court and the Division of Tax Appeals (taken from appellants' notices of appeal):

Parcel	*Docket Numbers*	
	Appellate Division	*Division of Tax Appeals*
Block 105A, Lot 31	A-3043	L-88-71, L-89-71
	A-3044	L-104-72, L-105-72
	A-3055	L-98-73
Block 105B, Lot 24A	A-3045	L-92-71, L-107-72 L-108-72, L-101-73

Opinion and Judgment of Appellate Division, Superior Court

Parcel	*Docket Numbers*	
	Appellate Division	*Division of Tax Appeals*
Block 106A, Lot 19	A-3046	L-110-71, L-127-72 L-119-73
Block 106A, Lot 21	A-3050	L-111-71, L-112-71
	A-3046	L-129-72, L-128-72
Block 106B, Lot 9	A-3048	L-137-72, L-138-72
	A-3049	L-126-73
Block 106C, Lot 13	A-3052	L-143-72, L-144-72
	A-3053	L-131-73
Block 108B, Lot 26BD	A-3047	L-148-71, L-149-71
	A-3056	L-159-72, L-160-72 L-136-73
Block 108, Lot 26 NC	A-3047	L-142-71, L-143-71
	A-3051	L-150-72, L-135-73
	A-3056	

We find the determination of the Division supported by sufficient credible evidence as to the following properties:

Block 105A, Lot 31

Block 105B, Lot 24A

Block 106A, Lot 19

Block 106A, Lot 21

Block 106B, Lot 9

Block 106C, Lot 13

Block 108, Lot 26 NC

Block 108, Lot 26 BD

Opinion and Judgment of Appellate Division, Superior Court

With respect to these parcels, which are the only parcels under appeal, the taxpayers' computations are not persuasive. In some cases they would yield negative values, that is, the land would be worth less than the cost of improvements. If the market value of improved property is less than $60,000 per acre, and if the cost of improvements equals or exceeds the market value of an improved parcel, there would be no explanation for the continuation of the taxpayers' costly operations.

The judgments below are affirmed.

Opinions and Judgments of Division of Tax Appeals Filed May 13, 1974 and October 16, 1974

STATE OF NEW JERSEY
DEPARTMENT OF TREASURY
DIVISION OF TAX APPEALS

BERGEN COUNTY ASSOCIATES, EAST RUTHERFORD INVESTMENT CORP., BRANCASONS, INC., DEANNA INDUSTRIES, INDUSTRIAL CONSTRUCTION ASSOCIATES,

Petitioners,

vs.

BOROUGH OF EAST RUTHERFORD,

Respondent.

SAVINO, J.

Appearances:

Marvin H. Gladstone, Esq.

Joel Ellis, Esq.

For— Bergen County Associates
East Rutherford Investment Corp.
Brancasons, Inc.
Deanna Industries
Industrial Construction Associates

Tonita Conaghan, Esq.

For—Borough of East Rutherford

Opinions and Judgments of Division of Tax Appeals
Filed May 13, 1974 and October 16, 1974

This is a series of 18 tax appeals filed by the petitioners against the Borough of East Rutherford together with a number of cross-appeals filed by the Borough.

All of the properties are located in the East Rutherford Meadowland complex where a large number of buildings were built on meadowlands developed by H. Jerome Sisselman. All of the properties in these appeals are without improvements. They are in various stages of development for future use. Some have completed roads giving them full access while others do not have complete roads. Almost all of the properties are raw meadowland although some have a small amount of fill, mostly meadow mat, a material excavated from the meadow floor so the builders could reach clay.

The problem is to establish market value for the properties in the condition that existed during the tax years.

The petitioners made a strong point of the fact that the Meadowland Commission that now controls the zoning and granting of permits to build froze all development or construction for a period of two years. The respondent subpoenaed George Cascino who identified himself as chief engineer of the Hackensack Meadowland Development Commission located in Lyndhurst, N. J.

Mr. Cascino admitted that all applications for zoning permits and building permits had to come before him. He has five full-time engineers working with him. He testified that the question of piping water would be considered with each application. He also said there was no requirement that Berry's Creek had to be diked. He did say that the minimum first floor level for an new construction had to be no less than ten feet above low tide level.

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Under cross-examination Mr. Cascino admitted that from May 1, 1970 to November 8, 1972 it was almost impossible to secure a permit for anything in certain parts of the meadowland. He also admitted to a policy of not considering any use of certain property that might fall within the area of the Sports Complex then under proposal by the State.

Regardless of this testimony I am inclined to ignore the importance of this problem. If I found that anyone really suffered harm because of the Meadowland Commission activities I would consider redress. But noting the inflation of values in the area during the last ten years certainly no owner has suffered harm.

At the beginning of these hearings that concerned the tax years of 1969, 1970, 1971 and 1972 I announced I was going to use as a guide to value, testimony I received in a case involving Block 105A, Lot 28, 29 and 30 contained in the transcript of a hearing on similar properties taken in October 18, 1972.

In that case H. Jerome Sisselman, perhaps the most knowledgeable person in the area in developing meadowland, gave testimony. The case concerned two sales by Mr. Sisselman. One for $60,000.00 an acre and the other for $55,000.00 an acre. Both purchases were made by adjacent businessmen for expansion purposes. I gave some credit for that added consideration. Mr. Sisselman gave a detailed list of improving meadowland property, what the cost of excavating meadow mat, cost of piling, cost of roads from excavation mat to soil foundation, stone coverage, then macadamizing, costs of curbs, sewers, water lines, cubic cost of material, etc. It was a complete exposition.

I finally decided that raw meadowland, during 1968 and 1969, was worth $60,000.00 an acre at market value. From that amount would be deducted the cost of the improvement such as roads, utilities and adjust especially bad water conditions. He estimated the cost of fill road from excavation to paved top at $200.00 a linear foot, the cost of excavating meadow mat at $1,000.00 a foot per acrea and to fill at $3,000 per foot per acre.

In the aforementioned October 18, 1972 case the sale was for raw meadowland and I gave the taxpayer the full deductions for the improvement he had to make on each property that was part of the condition of sale. The buyers of those properties made their own building excavation and preparation for construction.

Testimony given in the case of Block 105A—Lot 28, 29, and 30 (transcript of November 6, 1972—page 4 to 17), Ben Fried, president of Bendix Mills, who purchased six acres of meadowland adjacent to his factory, testified that the price was $55,000.00 per acre. He stated that the contract provided that Mr. Sisselman, the seller, was obligated to put in the street, the utilities and everything to improve the land. The original Contract of Sale was signed in 1968. It contained an option to buy within a year with a cost of $5,000.00 for the option and $55,000.00 an acre. The contract was executed.

Another sale by Mr. Sisselman was made in 1969 in Premier Industries Corp. to Marathan Enterprises Inc. of 4.8 acres at $60,000.00 per acre. This was Block 106A—Lot C and 3B. (Transcript of November 2, 1972, page 6). Both of the above sales were meadowlands in the immediate area of the subject properties.

To determine the cost of necessary improvements to make the properties saleable at a market value of $60,000.00 per acre the Court accepted the taxpayers figures in all cases because the municipality offered no evidence to contradict the claims.

Following is a list of the type of improvements and the cost:

For a 60 foot road, fill was placed over the meadowland 100 feet wide. It was allowed to settle for six months, then improvements such as utilities, water, sewer lines, storm sewer lines, several layers of crushed stone and a macadam top with cement curbs at $200.00 per foot. Each side of the road was $100.00 a foot for paving property.

To install a 108 inch concrete pipe to carry drainage streams and water condition at $100.00 a running foot.

To build dykes on land adjacent to Berry's Creek at $50.00 a foot.

Where the roadway was filled but not macadamized or curbed, $10.00 a running foot.

When a property would require a sewer pump because of low elevation the cost would be $25,000.00.

Storm sewers required a certain municipal easement running through properties at $12.50 a running foot.

Where certain lots had severe water conditions, the cost of diverting the water, mucking out the

bottom and filling in ran from $50,000.00 to $75,-000.00 per plot.

The Court placed a value of $60,000.00 per acre on all of the plot. From this was deducted the cost of the above improvements. Where the estimated value exceeded the assessed value after all deductions were made the taxpayers appeals were dismissed. Where the improved value with deductions made were less than assessed value the reductions were granted.

Six full days of hearings were devoted to these appeals. A personal inspection of the meadowland properties was made by the Court and the attornies one August day. The temperature was over 90 degrees.

At the conclusion of the hearings of these appeals, it was stipulated that the figures for 1972 would apply to the year 1973 as well.

Case 31 L 87 69

Case 32 L 237 70

Case 33 L 88 71

Case 34 L 89 71

Case 35 L 104 72

Case 36 L 105 72

L 98 73

Block 105A—Lot 31—4.08 acres

Assessment 1969	$102,000.00
Assessment 1970	$102,000.00

Assessment 1971	$ 84,000.00	
Assessment 1972-73	$ 84,000.00	
Estimated Improved Value		$244,860.00

Owner—Bergen County Associates

Manor Road ends in this plot with a cul-de-sac, a paved road with 109 feet on the circle. The north line runs 350 feet to the railroad then 301 feet along the railroad on the curve in an arc following the railroad 250 feet. The taxpayer claimed a great deal of meadow mat was dumped on the property. He also said placing a building might be difficult because of the arc forming the rear of the property. The taxpayer had no other deductions. No cross-appeals were made for 1969 and 1970. Those appeals are dismissed. Cross-appeals were made by the borough for 1971 and 1972. The municipal assessments for those two years will be reinstated. Judgment for 1971 will be $122,400.00 and for 1972 judgment will be $122,-400.00.

Case 41 L 91 69

Case 42 L 240 70

Case 43 L 91 71

Case 44 L 92 71

Case 45 L 107 72

Case 46 L 108 72

L 101 73

Block 105B—Lot 24A 3.634 acres

Assessment 1969	$218,000.00
Assessment 1970	$218,000.00
Assessment 1971	$118,000.00
Assessment 1972--73	$118,000.00
Estimated Improved Value	$218,040.00

Owner—East Rutherford Industrial Corp.

Cross-appeals were filed by the borough for 1971 and 1972. This a corner property with frontage of 470 feet on Murray Hill Parkway and 360 feet on East Union Avenue. It has been filled with garbage many years ago. The taxpayer explained that a great deal of the garbage fill had to be removed and trucked away. I made a personal observation of the site and found a spanking brand new modern bank building on the plot beautiful landscaping and a great deal of parking space. The land is leased to the bank, no rental was given. I should rate this plot the heart of the complex and very valuable ground. The appeals for 1969 1970 are dismissed. It is the judgment of this Court that the municipal assessments for 1971 and 1972 be restored. Judgment for 1971 will be $218,000.00 and 1972 judgment will be $218,000.00.

Case 51 L 92 69

Case 52 L 242 70

Case 53 L 110 72

L 103 73

Block 105B—Lot 27, 28, 29, 30, 31—9.50 acres

Assessment 1969	$419,200.00

Assessment 1970	$321,000.00
Assessment 1972-73	$292,800.00
Estimated Market Value	$570,000.00

There are four lots assessed together. Lot 27 has 448.12 foot frontage on Murray Hill Parkway. It also has 431.05 feet on Manor Road. Lot 28 has 95.4 feet on Manor Road, Lot 29 has 95.49 feet on Manor Road, and Lot 30 is without frontage on Manor Road except for a cul-de-sac that ends there where it has 205 feet of frontage. Lot 30 runs alongside Berry's Creek for 515 feet. The property is raw swamp.

Ackerman's Creek runs through the property and the taxpayer estimates it would cost $90,000.00 to relocate it. He had previous evperience in this type of work. Manor road was not built in 1969 and 1970 for a deduction of $43,100.00 for each year, 900 feet of dyking for $4,500.00. Adding all deductions, the value remains higher than the assessment. All appeals are dismissed.

Case 74 L 109 69

Case 75 L 248 70

Case 76 L 100 71

Case 77 L 117 72

L 110 73

Block 106A—Lot 40-6H 3.50 acres

Assessment 1969	$ 87,500.00
Assessment 1970	$ 87,500.00
Assessment 1971	$105,000.00

Assessment 1972-73 $105,000.00

Estimated Improved Value $210,000.00

Owner—Bergen County Associates

This property of 3.50 acres is located at the end of Whelan Road where it ends with a cul-de-sac at the northeast corner. The land faces 146 feet around the circle and an additional 50 feet along Whelan Road. The north side runs 268 feet along the N. J. & N. Y. Railroad and must be prepared at a cost of $61,800.00. There will also be a sewer pump needed because of lack of gravity elevation at a cost of $25,000.00. Whelan Road is complete with all utilities. My estimated value, fully improved, would be $210,000.00, deducting $86,800.00 for improvement would leave a value of $123,200.00. The present assessment is $87,500.00 for 1969 and $105,000.-00 for 1971. I dismiss the appeals for all years.

Case 80 L 102 71

Case 81 L 119 72

L 112 73

Block 106A—Lot 6F 3.8 acres

Assessment 1971 $84,000.00

Assessment 1972-73 $84,000.00

Estimated Improved Value $228,000.00

Owner—Brancasons, Inc.

This is 3.8 acres of land with a 40 foot frontage on Bronca Road that is fully improved on the northeast. It runs 502 feet along the N. J. and N. Y. Railroad, the

sides are 274 feet and 184 feet. Petitioner claims property would require a sewer pump at $25,000.00 and $50,-000.00 worth of piping along railroad. It is presently raw meadowland. My estimated value, improved, would be $228,000.00. Deducting the $75,200.00 for improvements would be far more than the present value. There is no Cross-appeal. I dismiss appeals for all years.

Case 89 L 104 69

Case 91 L 126 72

Case 90 L 109 71

L 118 73

Block 106A—Lot 17-18 5.4 acres

Assessment 1969 $145,600.00

Assessment 1971 $142,400.00

Assessment 1972-73 $142,400.00

Owner—Brancasons, Inc.

These two adjacent lots are assessed together. Lot 18 faces Branca Road with a 250 foot frontage and 233 feet on Murray Hill Parkway. Both roads fully improved. Lot 17 fronts on Branca Road for 168 feet plus 170 feet around the cul-de-sac that ends Branca Road. The eastern side runs along the N. J. and N. Y. Railroad for 564 feet. Lot 17 will need a sewer pump at $25,000.00. In middle of Lot 17 is a permanent lake that would have to be dredged, mucked out and filled before any use could be made of it. The petitioner estimates the cost at $75,000.00. The lake is 250 feet in length by 230 feet. They arrived at $25,000.00 to prepare a

ditch along side the railroad. On my estimate of value at $344,000.00 the deducted $25,000.00 would leave my figures above the assessment. The appeals are dismissed.

Case 92 L 105 69

Case 93 L 251 70

Case 94 L 110 71

Case 94 L 127 72

L 119 73

Block 106A—Lot 19 2.868 acres

Assessment—$86,000.00

Assessment—$86,000.00

Assessment—$86,000.00

Assessment—$86,000.00 (1973—same)

Market Value Improved $172,080.00

Lot 19 faces Murray Hill Parkway with a frontage of 250 feet. The North line is 440 foot, the south line is 335 feet and the west line runs along the railroad for 429 feet. A ditch runs along the railroad that must be piped. Beside the ditch is a lake. The taxpayer claims the lake must be drained and 6 to 8 feet of muck removed before filling. He estimates $50,000.00 for the lake and 108 foot of concrete pipe for the ditch of 429 feet at $25,000.00. Murray Hill Parkway is completed up to this lot and a top would have to be placed on it at $10.00 a foot for another $25,000.00. Deducted from my estimated value I will assess this property at $72,000.00 for the tax years concerned.

Case 97 L 107 69

Case 98 L 252 70

Case 99 L 111 71

Case 100 L 112 71

Case 101 L 128 72

Case 102 L 129 72

L 120 73

Block 106A—Lot 21 3.445 acres

Assessment 1969	$62,100.00
Assessment 1970	$62,100.00
Assessment 1971	$83,500.00
Assessment 1972-73	$83,500.00
Improved Value	$206,700.00

Owner—Bergen County Associates

This is a little less than 3½ acres of meadowland located on Murray Hill Parkway with a frontage of 464 feet. The north line runs 350 feet, the south line 232 feet and the west line 474 feet along the Erie Railroad.

The taxpayer testified that although this property ran along the Erie Railroad no railroad siding was possible for this property and for that reason its value was diminished.

Allowing $100.00 a foot for filling and paving Murray Hill Parkway for $46,400.00 and running a 108 foot cement pipe to contain the ditch along the railroad of 474

feet at $100.00 a foot for $47,400.00, it would leave the market value well above the assessed value.

Because cross-appeals were not filed for 1969 and 1970 these appeals will be dismissed. Cross-appeals were made by the borough for 1971-72. The assessment for 1971 will be $103,300.00 and for 1972 the assessment will be $103,300.00.

Case 125 L 114 69

Case 126 L 257 70

Case 120 L 135 72

L 124 73

Block 106B—Lot 6-7 10.850 acres

Assessment 1969-70	$224,600.00	
Assessment 1972-73	$270,000.00	
Market Value Improved		$651,000.00

Block 106B, Lot 6-7, is a large plot with a frontage of 646 feet on Madison Circle Drive. A 20 foot storm water easement runs along the easterly side for 448 feet. The easterly side runs 200 feet to the beginning of a curve of 486 feet and then 311 feet along the railroad and then another curve of 294 feet and 448 feet on the southerly side adjacent to the storm water easement. The taxpayer claimed the following as improvements necessary to prepare the property: 646′ of road topping at $10.00 a foot for $6,460.00, 867′ of 108′ piping along railroad for ditch at $100.00 a foot for $86,700.00, 526′ of dyking of Berry's Creek for $26,000.00 and a sewer line for $7,500.-00. All of this totals $126,660.00. Deducting that amount

from my market value indicates a greater value than the assessment. The appeals are dismissed.

Case 131 L 115 69

Case 132 L 258 70

Case 133 L 136 72

L 125 73

Block 106B—Lot 8 4 acres

Assessment 1969	$ 60,000.00	
Assessment 1970	$ 60,000.00	
Assessment 1972-73	$100,000.00	
Market Value Improved		$240,000.00

Owner—Bergen County Associates

This plot has a front on Madison Circle Drive of 321 feet and a rear line along Berry's Creek of 471 feet. The north side line runs 448 feet adjacent to a storm sewer easement that must be piped. The road was paved at time of assessment. The taxpayer claims $42,900.00 for a 108′ cement pipe for a ditch. He claims a water condition on the property would require $75,000.00 to rectify. Total improvement of $117,900.00 deducted from my market value leaves a balance more than the assessment. All appeals are dismissed.

Case 136 L 116 69

Case 137 L 137 72

Case 138 L 138 72

L 126 73

Block 106B—Lot 9 5.544 acres

Assessment 1969	$ 83,200.00	
Assessment 1972-73	$138,600.00	
Market Value Improved		$332,640.00

Owner—Brancasons, Inc.

There is a cross-appeal on this case for the year 1972. This large plot fronts on Madison Circle with 291 feet. Two side lines were 385 feet on the south side and 409 feet on the north. The east line ran 896 feet along Berry's Creek.

The owner of this property filled in 20% of the land with hard solid fill from a school excavation in Hackensack. Quoting from H. Jerome Sisselman in testimony offered on October 18, 1972 on page 23 of the transcript: "the value of fill is $30,000.00 per foot per acre." This fill is five feet deep so I will credit the value of the 1½ acres filled in at $16,500.00.

The taxpayer estimated it would cost $44,800.00 for dyking Berry's Creek, burying of land would be $7,000.00, soil control at $5,000.00. An estimate of $75,000.00 to excavate and fill in the rear section of the property under water, adding these items comes to $131,800.00 less the $16,500.00 credit for fill gives a total deduction of $115,300.00. This amount deducted from my estimated market value of $332,640.00 leaves a total of $217,340.00. Since no cross-appeal was filed for 1969 the appeal on that year will be dismissed. On the cross-appeal of Case 137 the original municipal assessment of $200,600.00 will be restored. Judgment for the year 1972 is $200,600.00.

Case 139 L 117 69

Case 140 L 259 70

Case 141 L 139 72

L 127 73

Block 106B—Lot 10 4.07 acres

Assessment 1969	$ 60,000.00	
Assessment 1970	$ 60,000.00	
Assessment 1972-73	$101,800.00	
Estimated Value Improved		$244,200.00

Owner—Bergen County Associates

This 4 acre plot has a frontage of 376 feet on Madison Circle that was not installed until 1971. It cost $100.00 a foot for roadway so the taxpayer will get a credit of $37,600.00 for 1969 and 1970.

A 468 foot dyke along Berry's Creek was necessary at $50.00 a foot for $23,400.00.

Giving the taxpayer full credit for his deductions the value remains above the assessment. Appeals are dismissed.

Case 142 L 118 69

Case 143 L 260 70

Case 144 L 140 72

L 128 73

Block 106B—Lot 11 3.19 acres

Assessment 1969	$47,600.00

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Assessment 1970	$47,600.00	
Assessment 1972-73	$78,250.00	
Value Improved		$191,400.00

This property fronts on Madison Circle with 402 feet. The north line is 396 feet, the south line 338 feet and the east line runs 377 feet along Berry's Creek.

Madison Circle was not built in 1971 so that 402 feet of frontage at $100.00 per foot gives a deduction of $40,-200.00 for 1969, 1970, 1971. To dyke Berry's Creek at $50.00 a foot would be $18,850.00 for the years 1969, 1970 and 1971. A drainage pipe along 338 feet easement would cost $12.50 a foot or $4,225.00. The deduction amounts to $63,275.00 leaving a market value above the assessments.

Appeals are dismissed.

Case 145 L 119 69

Case 146 L 261 70

Case 147 L 141 72

L 129 73

Block 106B—Lot 12 3.654 acres

Assessment 1969	$109,600.00	
Assessment 1970	$109,600.00	
Assessment 1972-73	$ 91,000.00	
Market Value Improved		$219,240.00

Owner—Bergen County Associates

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This plot is in the corner of Murray Hill Parkway with 535 feet and 259 feet on Madison Circle Drive. Murray Hill Parkway is not improved in front of this property. The rear of the lot runs 551 feet above Berry's Creek needing dyking at $27,550.00, 338 feet of sewer piping at $12.50 a foot for $4,225.00. He estimated $75,000.00 to correct a bad water condition. He also figures $10,000.00 to cart away muck. The deductions add up to $116,775.00 leaving market value above assessments. Appeals are dismissed.

Case 153 L 122 69

Case 154 L 264 70

Case 155 L 143 72

Case 156 L 144 72

L 131 73

Block 106C—Lot 13 2.89 acres

Assessment 1969	$69,400.00	
Assessment 1970	$69,400.00	
Assessment 1972-73	$43,400.00	
Estimated Improved Value		$173,400.00

Owner—Deanna Industries

This is a corner plot with 360 feet on Murray Hill Parkway and 330 feet on Madison Circle. Murray Hill Parkway was paved and so was Madison Circle. The property was garbage filled. There were two ditches on the property. Both ditches will have to be relocated and prepared. They are approximately 15 feet wide. The taxpayer also

claims that a corner property had a disadvantage because local ordinance called for facing with brick on the two street sides.

There is no need to add the deductions. The estimated value far exceeds the assessments. No cross-appeals were filed for 1969 and 1970. The appeals for those years are dismissed. A cross-appeal was filed for 1972 and it is the judgment of this Court that the municipal assessment of $86,800.00 be reinstated. Judgment for 1972—$86,800.00.

Case 158 L 267 70

Case 159 L 134 71

Case 160 L 135 71

Case 161 L 145 72

Case 162 L 146 72

L 132 73

Block 107—Lot 92-93 22.83 acres

Assessment 1970	$ 91,300.00
Assessment 1971	$159,600.00
Assessment 1972-73	$159,600.00

Owner—Industrial Construction Company

These two lots assessed together comprise 22.83 acres. They were assessed at $142,980.00 in 1969. Lot 92 is 337 feet wide by 1,400 in depth. Lot 93 is 330 feet wide by 1,600 feet in depth. The property faces Berry's Creek and is pure marsh land. It is surrounded by other privately

owned marsh land and there are no roads. The closest road is Paterson Plank Road, more than 2,000 feet to the west. The land is land locked and is presently useless. It was mentioned by Mr. Cascino, the meadowland engineer, that it came within the sport complex area. Until then I will give it a municipal assessment of $1,000.00 an acre or $22,830.00 for all four assessment years.

Case 164 L 127 69

Case 165 L 268 70

Case 166 L 142 71

Case 167 L 143 71

Case 168 L 150 72

L 135 73

Block 108—Lot 26 NC 3.63 Acres

Assessment 1969	$198,700.00
Assessment 1970	$ 25,000.00
Assessment 1971	$109,000.00
Assessment 1972-73	$109,000.00
Estimated Improved Value	$217,800.00

Owner—East Rutherford Investment Corporation

This is a 3.63 acre plot with a 521 foot frontage on a service road adjacent to Route 3. It has a depth of 348 feet on one side and 90 feet on the other. It is garbage filled. Mr. Sisselman contends the garbage fill is a detriment and must be excavated. However, in testimony in

other cases he admitted garbage fill was suitable for parking lots, etc.

This property has an extremely good location. A service station once occupied the property but has been demolished. I consider the assessments on this property more than fair. I will dismiss the appeals for 1969-1970. On the cross-appeals for 1971 and 1972 the municipal assessments will be restored. Judgment for 1971 shall be $174,200.00 and 1972 at $174,200.00.

Case 169 L 135 69

Case 170 L 269 70

Case 171 L 148 71

Case 172 L 149 71

Case 173 L 159 72

Case 174 L 160 72
L 136 73

Block 108B—Lot 26BD 34.90 acres

Assessment 1969	$349,300.00
Assessment 1970	$259,000.00
Assessment 1971	$262,550.00
Assessment 1972-73	$385,000.00
Value after improvements	$2,094,000.00

This is a large tract situated in a service road adjacent to Route 3. It has a 1,700 foot frontage on this road, runs over 200 feet deep and is zoned for industry. It is the

most desirable plot in the complex being next to Route 3 and the New Jersey Turnpike. The taxpayer claims a defect because it is three feet below road level. 2,000 feet runs along Berry's Creek. No utilities are available at this time. The appraiser for the taxpayer evaluated the property at $47,500.00 for the years 1968 to 1972. He claimed that because the land was 3 feet below road level it was landlocked.

If I were to accept Mr. Sisselman's testimony in a prior case when he stated it cost $3,000.00 per foot per acre to fill in the ground, the cost of such fill for this property, to bring the whole acreage up to road level would be $315,000.00. The land is far more valuable than the present assessments.

No cross-appeals were filed for 1969 and 1970 and the appeals for those years are dismissed. Cross-appeals were filed for 1971 and 1972 and it is the judgment of this Court that the municipal assessments be restored. For the year 1971 judgment will be $525,100.00 and for the year 1972 judgment will be $525.100.00.

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STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAX APPEALS

Docket Nos. L 86-69
L 236-70
L 86-71

CASE No. 3, 3A, 3B

BERGEN COUNTY ASSOCIATES, INC.,
Petitioner,

vs.

BOROUGH OF EAST RUTHERFORD,
Respondent.

Date of Hearing: October 18, 1972

SAVINO, J.

Appearances:

James Demetrakis, Esq.
For Petitioner as to 1971

William Shedd, Esq.
For Petitioner as to 1969-1970

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William D. Gorgone, Esq.
For Respondent

Block 105A—Lots 28, 29, 30

Tax Year—1969, 1970, 1971

		County
Land	$244,900.00	
Imp.	none	
Total	$244,900.00	Dismissed

The property under appeal consists of 10.2 acres of raw meadowland. The land was divided into three lots on the tax map known as Lot 28, 29, 30, in Block 105A. In 1969 there was no access by way of roadway to the property. During 1970 the taxpayer continued a road called Manor Road from a point 1,000 feet from Murray Hill Parkway into the subject property ending a cul-de-sac at the beginning of the lot known as Number 30. The taxpayer by agreement with the town, pays the full cost of building roads, sewers.

The Court devoted four days to hearing testimony in order to determine the value of this property. A major problem being the great difference of opinion between the parties as to value. The municipality assessed the land at $24,000.00 an acre. The taxpayer presented one expert who stated it was worth only $1,450.00 per acre.

The background of this case is interesting. Many years ago H. Jerome Sisselman purchased hundreds of acres of meadowland east of State Highway 17 at a price that sounds ridiculous when compared with todays costs. However, that was the price anyone could have purchased the property at that time.

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The land lay fallow for many years until Mr. Sisselman conceived the idea of building an industrial complex on his property. He started out by building a very wide road from Route 17 to Berry's Creek called East Union Avenue. It was almost 3,000 feet in length right in the center of his property. He then solicited industiral.companies with high financial ratings by offering to build a warehouse or industrial building on the property under a 20-year lease plan. The buildings, for economic reasons, had to be at least 80,000 square feet in size.

After securing such a lease Mr. Sisselman would then assign it a lending company for a mortgage that gave him enough money to develop the land and build the building. He constructed the buildings with sub-contractors acting under the supervision of a reliable engineering firm that received a percentage of the cost for its contribution and also lent Mr. Sisselmen its credit in buying material, etc.

Mr. Sisselman's gamble paid off. He found many good reliable companies ready to place their building and operations in this location that was only 15 minutes driving time to New York City in off-commuting hours.

After completing the development of East Union Avenue that ran east and west Mr. Sisselman then laid out streets from the main road running north and south and from these other roads again from east to west thus creating the typical gridiron effect of development commonly used in residential areas.

The subject property is situated on the end of one of these roads and its development awaits sales to the proper buyer. An added problem in the case is the activity of the newly created Meadowland Commission that now has control of development of this property and

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will not issue any building permits until final zoning plans are complete.

Mr. Sisselman improves each piece of property as it is sold or leased, until that time it lays in its original state, marshland. It is usually covered with soft wet muck or under water completely. The question for this Court is to establish its taxable value while unimproved.

At the time of this case Mr. Sisselman had created an industrial complex worth over $20,000,000.00 in ratables without a penny cost to the municipality. He paid for his own roads, sewers, pumping stations, etc. His attitude during the trial was that the municipal officials instead of appreciating his efforts did everything in their power to frustrate him, primarily by taxing his property at a higher rate than others.

The municipal case was based on the testimony of two witnesses. The local assessor who did not take office until 1970 and only testified as to his opinion of the value due to his observation as a life-long resident of the town.

The second witness, Albert Galik, an expert appraiser, made his estimation of value on the market data approach. He submitted a long series of sales ranging in price of up to $60,000.00 an acre for land in the area during the subject tax years.

After a great deal of direct and cross-exmination on his list of sales it was determined that two of the sales were the best comparables. They were made by Mr. Sisselman himself to the buyers. One was Block 106 Lot 2C and 3B from Premier Industrial Corp. to Marathon Enterprises, Inc. 4.8 acres in November 1969 at $60,000,00 an acre. The other sale, Block 106C, Lot 11 and 16 from Bergen County Associates to Bentex Mills, Inc. approxi-

mately 6 acres at $55,000.00 an acre. Both of these sales concern property which is within a few hundred feet of the subject property. They are situated on improved roadway with all utilities installed, but the property itself is all meadowland, as is the subject property.

Mr. Sisselman refuted the importance of these sales. He pointed out that he himself sold the property to the Bentex Mills, Inc., a company that needed the property for expansion of the industrial project located on adjacent land. The seller introduced into evidence a breakdown of the items that he had to pay prior and since the sale so that the property would conform with the sub-division requirements as granted by the Borough.

He claimed that the itemized list he presented is supported by ledger accounts comprising such items as fill for road bed, curbing, sewers, real estate commissions, an item of $7,000.00 paid to the State of New Jersey for riparian grants that made a total of $233,204.00 subtracted the sale of $334,235.00 for a net in return of $101,031.00, actually resulting in a per acreage value of $16,625.00.

Mr. Sisselman also placed into evidence budget sheets in cross-breakdown in the development of several other parcels in his industrial complex, all of them indicating the cost of improvement to the property.

Peter C. Robinson, an expert appraiser, appeared for the taxpayer stated that in his opinion the 10.2 acres was worth $12,000.00.

After describing the difficulty in preparing the land for development Mr. Robinson submitted a list of sales to support his argument. Most of them were not usable

in the opinion of this Court as being remote and vastly different in topography.

One of Mr. Robinson's sales was meaningful. It was from the Borough itself to Top Notch Metal Realty Company comprising 5 acres for $12,000.00 an acre in 1969. The property was land-locked but situated behind the owners property that was situated on State Highway 20.

Mr. Sisselman testified for the taxpayer and identified himself as a managing partner of Bergen County Associates and personally was in charge of development of the industrial complex of which the subject property is part of. Mr. Sisselman gave a detail accounting of the exact cost of preparing raw meadowland for use involving the laying of roadway, utilities mucking out the meadowland bog, filling with proper fill. He gave a detail accounting of the cost for the improvements, for example $1.50 a cubic yard to remove the meadowland muck and $3.50 a cubic yard for the fill, etc. All figures as of October 1, 1969. It was his conclusion that it would cost $60,000.00 per acre for the improvement of each acre of land to make it ready to build on.

The taxpayer also charged discrimination in his complaint. Three exhibits were submitted as proof. Compiled in great detail and obviously the result of hard work were exhibits R-8, R-9 and R-10 covering the years 1969, 1970, and 1971.

R-8 was a complete list of all residential sales in East Rutherford during 1969 indicating sales to be approximately 75% of assessed value.

R-9 was a list of all assessments of industrial properties west of Hackensack Street known as uplands.

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R-10 was a list of all assessment east of Hackensack Street known as the meadowlands.

R-9 exhibit revealed that the average assessments of industrial properties in the upland ranged between $30,000.00 and $50,000.00 per acre.

Property east of Hackensack Street, in the meadowlands, ran from $35,000.00 to $64,000.00 an acre except for one that was at $9,500.00 per acre. Most of these properties were improved.

The Court noted that in the R-9 exhibit there were two exchanges of title indicating sales. An investigation was ordered on these sales and they revealed that the sales price during this period averaged about $30,000.00 per acre. This information would sustain the assessors opinion that uplands were not as valuable as meadowland for industrial use.

The R-10 exhibit was then examined in detail. The Court asked for explanation of the assessment on 30 acres of meadowland situated on State Highway 20 at $9,500.00 per acre.

The property owned by Maibros known as Block 108-3, Lot 19A was actually 38 acres. A trucking terminal occupied 8 acres and was assessed at a higher rate than the remaining 30 acres. The property has a 500 foot frontage on Route 20, was less than a quarter mile from the intersection Route 20 and Route 3 that placed the location with 10 minutes driving time to New York City. The land was filled with industrial debris but otherwise unimproved. A dirt roadway existed from Route 20 into the property so trucks could drive into it with fill.

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Les Plosia, Municipal Assessor, explained that the Maibros property assessed at $9,500.00 per acre because the owner was not going to subdivide it and improve it, whereas the subject property was part of a plan indicating improvements were to be made. He stated it was the policy of local governing body to regard the Bergen County Associates Industrial complex as separate from the rest of the meadowland because of the planning and improvements that had gone into the property.

The main thrust of the discrimination charge was diluted by an analysis of exhibits R-9 and R-10. It is obvious that the local assessor was correct in assessing the meadowlands at a higher rate because it seemed to be more attractive to industrial property buyers.

A review of the testimony leads this Court to the basic correctness of the true market value as indicated in the two sales submitted by the municipality. The sale of Block 106A, Lot 2C and 3B for $60,000.00 an acre and Block 106A, Lot 11 and 16 for $55,000.00 an acre. The rebuttal testimony of Mr. Sisselman corroborated by Ben Fried, president of Bentex Mills as to the obligation of the seller to improve property before the sale was consumated leaving a net to the seller of $16,625.00 was effective. The Court will also note that in both of these sales the buyers owned the adjacent property and evidently were prepared to pay an extra consideration for the convenience to them to expand their activities.

It is the judgment of this Court that Block 105A, Lots 28, 29 and 30, comprising 10.2 acres be assessed at the rate of $15,000.00 an acre or a total of $153,000.00.

Carmine Savino, Jr.